IN THE

# Supreme Court of the United States

No. [redacted] 32

PETER CHAUNT, *Petitioner*,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

## PETITIONER'S REPLY TO OPPOSITION TO PETITION FOR CERTIORARI


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IN THE

# Supreme Court of the United States

No. 593

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## PETITIONER'S REPLY TO OPPOSITION TO PETITION FOR CERTIORARI

### I. The Discrepancy Between the Complaint and the Affidavit Was Raised in the Trial Court

The government is wrong in asserting (Opp. 11) that petitioner did not raise in the trial court his contention that a denaturalization judgment may not be based on a ground not stated in the affidavit of good cause.

The original complaint (I R. 2-8) included the ground of misrepresentation and concealment of arrests (I R. 5-6), along with the grounds contained in the affidavit. Petitioner filed a motion to dismiss the

complaint (I R. 10-12), which included the following paragraph (I R. 12):

> "IV. The Court is without jurisdiction in that one of the causes of action sought to be alleged in the complaint is not supported by an affidavit of good cause as required by section 340(a) of the Act."

In addition, petitioner filed a motion to strike certain allegations of the complaint, including the two paragraphs (XIII and XIV) which alleged the arrests and their materiality (I R. 19-20).

After a hearing, the trial court denied in toto both the motion to dismiss and the motion to strike (I R. 35-36).

The complaint was subsequently amended by the government several times. But certainly petitioner was under no obligation, and it would have been fruitless, to raise again before the trial court the same objection which the trial court had already overruled.*

**II. The Omission of the Arrest Ground From the Affidavit Is Fatal to a Judgment Based on the Arrests**

The government argues that the good-cause affidavit satisfies the purpose of the statute so long as it alleges some cause for denaturalization even if it fails to mention the particular cause on which the judgment is based (Opp. 13-14). This Court, of course, took a

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* The facts thus make inapposite the government's claim (Opp. 12) that it was deprived of an opportunity to amend the affidavit to conform to the complaint. But it might be added that the claim is also unsound because this Court has held that failure to file a proper affidavit with the complaint cannot be cured by filing such an affidavit after the action was instituted. *Matles* v. *United States*, 356 U.S. 256; *United States* v. *Zucca*, 351 U.S. 91.

contrary view in *Nowak* v. *United States*, 356 U.S. 660, 662 (see Pet. 8). And in principle, an affidavit which gives the wrong ground is worse than no affidavit at all. The latter case is merely an omission; the former is misleading.

As the government recognizes (Opp. 13), the affidavit is intended "to protect those proceeded against from ill-considered action." But the fact that such protection is accorded as to one cause of action does not diminish the need for such protection as to another. The government's argument, if accepted, would permit it to stultify the affidavit requirement by eliminating from the affidavit precisely those grounds which the government considers most important or which may be the only ones it presses at the trial.

**III: The Government's Contention Indicates That the Materiality Question Should be Reviewed by This Court**

The government seems to contend (Opp. 14-16) that materiality is satisfied whenever a falsification or nondisclosure foreclosed further inquiry into a relevant area.

The true test, however, is not merely whether further inquiry was foreclosed. It is whether the foreclosure of further inquiry *deprived the government of information which, if known, would have barred citizenship.* If the further inquiry would have made no difference, obviously a blocking of the inquiry could not be material. This is the general test for setting aside judgments procured by fraud. Restatement, Judgments (1942) secs. 118, 121, 126(2)(b). It has been applied in other fields (e.g. *Calvillo* v. *Robinson*, 271 F.2d 249 (7th Cir.)), and was applied in denaturalization cases by the Third Circuit in *United States*

v. *Anastasio*, 226 F. 2d 912, cert. den. 351 U.S. 931, and *United States* v. *Kessler*, 231 F. 2d 53. (See Pet. 9-11.)

In the present case, the government impliedly concedes that the insignificant arrests which occurred years before the statutory good-character period (see Pet. 9) would not in themselves have barred naturalization. But neither does it cite any other facts which would have been discovered if the arrests had been revealed, much less any such facts which would have warranted refusal of citizenship. All we have is the government's speculation that an investigation occasioned by knowledge of the arrests might have discovered other, unspecified, facts which "might have prevented the acquisition of citizenship" (Opp. 15). In view of the heavy burden of proof which rests on the government in a denaturalization case (*Schneiderman* v. *United States*, 320 U.S. 118; *Baumgartner* v. *United States*, 322 U.S. 665), it is clear that the government did not here establish the necessary element of materiality.

The government's Opposition shows (pp. 15-16) that the erroneous test of materiality advanced by the government and employed by the court below (see Pet. 7, 10) has been applied by other lower federal courts in denaturalization cases. The prevalence of this misconception of the materiality requirement indicates the need for intervention by this Court.

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